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APR 29 1981
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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

ANNE B. ZIPES, et al.,

Petitioners

vs. No. 78-1545

TRANS WORLD AIRLINES, INC.,

Respondent,

TRANS WORLD AIRLINES, INC.,

Cross-Petitioner,

vs. No. 78-1549

ANNE B. ZIPES, et al.,

Respondents,

INDEPENDENT FEDERATION OF FLIGHT ATTENDANTS,

Petitioner,

vs. No. 80-951

TRANS WORLD AIRLINES, INC., and ANNE B. ZIPES, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

RESPONSE OF TRANS WORLD AIRLINES, INC. TO ALTERNATIVE MOTIONS OF PLAINTIFF CLASS CONCERNING DISMISSAL OF NOS. 78-1545 AND 78-1549

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PETITION FOR CERTIORARI IN NO. 78-1545 FILED APRIL 10, 1979, IN NO. 78-1549 ON APRIL 11, 1979, AND IN NO. 80-951 ON DECEMBER 12, 1980. ALL

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Trans World Airlines, Inc.[1] welcomes plaintiffs' support for its motion but objects to their alternative motions. Our

[1] As required by Rule 28.1 of this Court, Trans World Airlines, Inc. states that it is a subsidiary of Trans World Corporation, of which Hilton International Co., Canteen Corporation, Spartan-Newfoods Corp., and Century 21 Real Estate Corporation are also subsidiaries.

objectives are the same: performance of the settlement agreement before the Court in No. 80-951 and dismissal of Nos. 78-1545 and 1549 as moot, both held up by the union petitioner's inclusion of the settlement approval order in No. 80-951 despite its conceded lack of interest in anything but competitive seniority. But the results of the motions would be substantially different. TWA's motion, excluding the settlement approval order from review, would obtain final court approval of the settlement. Plaintiffs' motions would leave the settlement order undisposed of and the settlement without court approval. This result is undesirable and wrong on several grounds.

Plaintiffs argue that the settlement agreement is now ready to be performed because the union petitioner in No. 80-951, with an interest only in the seniority order, cannot validly object to the settlement approval order. However, regardless of the union's real interest or standing, it did in fact appeal from the settlement approval order as well as the seniority order. And this Court has in fact granted certiorari to review the court of appeals' decision, expressly affirming both orders (cert. pet. No. 80-951, App. p. 10a). Plaintiffs are asking the Court to bypass the clear requirement of Rule 23(e) of the Federal Rules of Civil Procedure: "A class action shall not be dismissed or compromised without the approval of the court, . . ." Approval of the settlement by the district court's order, affirmed by the court of appeals, does not meet the Rule 23(e) requirement while this Court has granted the union's certiorari petition seeking reversal of the settlement approval order.

Plaintiffs' contentions also disregard the clear meaning of provisions of the settlement agreement itself although they rely on the agreement as the basis of their contentions. The settlement agreement requires TWA to make money payments and reemploy class members within certain periods "following the Final Order Date" (*id.* 27a, 30a). The "Final Order Date" is defined to mean the date on which a settlement approval order "becomes final and no longer subject to court review"

(*id.* 25a). If an appeal is taken from the order, the Final Order Date occurs when the order is affirmed and is "no longer subject to review or modification." If the district court disapproves the settlement in an order not thereafter reversed, the "Agreement shall be null and void and shall have no force or effect" (*id.* 35a-36a). The agreement was entered into after the certiorari petitions had been filed in Nos. 78-1545 and 78-1549. Accordingly the settlement agreement provided that the parties would file a motion and stipulation in the Supreme Court that the "currently pending petitions for writs of certiorari be held in abeyance during the settlement procedures, to be dismissed immediately after the Final Order Date" (*id.* 35a). Plaintiffs' inaccurate quotation of this provision (pp. 3-4) wrongly implies that the time for dismissal of the two petitions has now arrived. That will not happen until this Court refuses to review or affirms the settlement approval order. The plaintiffs' motion thus asks the Court to enter orders contrary to express provisions of the settlement agreement.

Plaintiffs' contentions are based on an assumption that the settlement agreement would be effective and binding on TWA if this Court were to reverse the settlement approval order in No. 80-951 after having treated Nos. 78-1545 and 78-1549 as moot. The assumption is refuted not only by the requirement of court approval in Rule 23(e), but also by the quoted provision of the agreement that would make the unapproved agreement "null and void" (*id.* 35a-36a).

Plaintiffs would have the Court order the parties to stipulate to "dismiss the writs" in Nos. 78-1545 and 78-1549 or alternatively to "dismiss the writs" itself. The settled Court practice, noted in TWA's motion (p. 3 n3), is otherwise:

> "The established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss."

United States v. *Munsingwear, Inc.*, 340 U. S. 36, 39 (1950). A footnote lists over 30 supporting Supreme Court citations. Later cases to the same effect include *Preiser* v. *Newkirk*, 422 U. S. 395, 403-4 (1975), and *County of Los Angeles* v. *Davis*, 440 U. S. 625, 634 (1979). TWA's motion accords with this Court's practice.

CONCLUSION

Plaintiffs' alternative motions, in contrast to TWA's motion, are contrary to their settlement agreement with TWA, Rule 23(e) of the Federal Rules of Civil Procedure, and this Court's settled practice. The present complexities of this litigation would be solved simply and certainly by the granting of TWA's motion.

Respectfully submitted,

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